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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,053	05/20/2004	Masahiro Ogawa	60188-865	6747

7590 10/03/2005

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EXAMINER

MONDT, JOHANNES P

ART UNIT	PAPER NUMBER
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2826

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/849,053

Applicant(s)

OGAWA, MASAHIRO

Examiner

Johannes P. Mondt

Art Unit

2826

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 3-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/20/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of the Group I invention (claims 1-2) in the reply filed on 9/16/05 is acknowledged.

Information Disclosure Statement

The examiner has considered the Information Disclosure Statement (IDS) filed 5/20/04 to the extent possible based on the form of the submission by Applicant: only the abstract has been considered. A signed copy of Form PTO-1449 is herewith enclosed.

In view of the apparent pertinence of Sakai's invention (see below) examiner kindly requests that IDS item JP 2001345478 A be made available by IDS in full, certified English translation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. **Claims 1-2** are rejected under 35 U.S.C. 102(e) as being anticipated by Sakai (6,681,270 B2).

Sakai teaches a semiconductor device (title, abstract, Figures 1-3 and cols. 3-5) comprising an active layer 16 (col. 3, l. 28-61) (N.B.: 16 is the active layer because when a voltage is applied to the light emitting element having a three-layered structure 12/16/18 light is emitted while said light inherently is emitted from recombination of electrons and holes accelerated in opposite directions by means of said voltage, which recombination mainly takes place in the undoped region between n-doped and p-doped layers 12 and 18, i.e., in the light emitting layer 16) constituted by a Group III nitride semiconductor layer 16 (loc.cit.) containing at least three different elements including at least aluminum (namely: AlGaIn) (col. 3, l. 41), wherein the active layer exhibits a fluctuation in the bandgap based on a variation in the distribution of the aluminum content in the active layer (col. 3, l. 41-60 and col. 4, l. 1-7).

On claim 2: The device of claim 22 would necessarily have to be formed in order to function. Claim 2 fails to further limit the device of claim 1 other than at most simply form each of its components.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sakai (JP 2001-345478 A, made of record by Applicant in IDS filed 5/20/04.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Johannes P. Mondt whose telephone number is 571-272-1919. The examiner can normally be reached on 8:00 - 18:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JPM
September 22, 2005

Patent Examiner:

A handwritten signature in black ink, appearing to read 'J. Mondt', with a stylized flourish at the end.

Johannes Mondt (Art Unit: 2826)